Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, JULY 20, 2004
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

BACKGROUND TO CLOSING OF INVESTIGATION OF UNITEDHEALTH GROUP'S ACQUISITION OF OXFORD HEALTH PLANS

The Antitrust Division of the Department of Justice recently closed its investigation of UnitedHealth Group, Inc.'s ("United") proposed acquisition of Oxford Health Plans, Inc. ("Oxford"). United is one of the largest health insurance companies in the country. Oxford is a significant regional health insurer, focused on the tri-state area of Connecticut, New Jersey, and New York.

The Division provides this statement pursuant to its policy on the issuance of investigation closing statements, available at: http://www.usdoj.gov/atr/public/guidelines/201888.htm. This statement is limited by the Division's obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the Division's evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the Division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. This statement does not bind the Division in any future enforcement action.

The Antitrust Division began investigating the proposed transaction soon after it was publicly announced in April 2004. The Division has obtained substantial information from Oxford and United and has interviewed almost one hundred industry participants, including hospitals and physicians who provide health care services to insurance plan subscribers, employers that provide health insurance to their employees, brokers and consultants who work with employers to obtain health insurance, and other managed care plans.

The Division's review focused on the proposed merger's potential effects on the sale of health insurance products by insurance plans and on the purchase of health care provider services.

Sale of Health Insurance Products

The Division examined the extent to which Oxford and United compete for the sale of health insurance products in the many metropolitan statistical areas ("MSAs") in the three states. The investigation suggested both that a hypothetical monopolist of fully-insured products in the tri-state area would be able profitably to increase price with limited substitution to administrative services only ("ASO") products and that health insurers may be able to price discriminate with respect to employers largely located within the tri-state area.

It also indicated that, at least in this geographic area, the definitions of particular products (such as PPOs and POS plans) have blurred, and insurers compete to offer insurance solutions. Given the above, and the fact that Oxford is not a significant competitor with respect to ASO products or sales to employers not largely located in the tri-state area, the Division concluded that the appropriate product market was no broader than the market for fully-insured health insurance products sold to employers that are largely located in the tri-state area. It appears that, in such markets, the combined firm would have market shares ranging from a very small percentage to 25 to 30 percent.

The Division concluded that the merger should not substantially lessen competition in any relevant market. First, harm from coordinated interaction appears unlikely. The wide variety of health insurance products offered, the differentiation among product lines, the diversity of health insurance customers, and the different methodologies for pricing to customers, would make it difficult for health insurers to coordinate on price or other dimensions of competition. Second, harm from unilateral effects is also unlikely. Oxford/United will have a number of viable competitors post-merger. In addition, United and Oxford are not close substitutes for one another for many customers. The two companies are unlike in several important respects, including the perceived breadth and quality of their networks, type of employer groups on which they focus, relative strength in particular geographic areas, and ability to provide additional network features.

Purchase of Health Care Provider Services

The Division also examined the possibility that this transaction would give the combined company buying-side market power over health care providers. For this buying-side analysis, the Division considered two product markets, physician services and hospital services. Physician services were analyzed in MSA geographic markets. Because an insurer may be able to price discriminate by identifying hospitals or systems that may be more dependent upon that insurer's membership, however, hospital services were analyzed both with respect to MSAs and hospitals or hospital systems that bargain as a single unit. In addition, the investigation suggested that government payer business is a significant factor in determining whether or not the merged company would be able profitably to decrease its reimbursement levels to providers. Therefore, in analyzing competitive effects, the Division's analysis took into account all payers for medical services from hospitals and physicians, including government payers, such as Medicare and Medicaid.

For all MSAs and for the large majority of hospitals and hospital systems, the merged company will not account for a substantial percentage of provider revenues. While market shares are one factor in negotiating rates, a number of other factors (including the ability to steer patients and negotiating style) are also significant. As a result, a large commercial payer may pay hospital rates in excess of those negotiated by smaller competitors. Other features of the markets examined also would limit an insurer's negotiating leverage post-merger. For instance, with the success of PPO and POS plans in the tri-state area, insurers have committed themselves to providing out-of-network benefits to their members. As a result, a hospital's revenue may not decrease significantly as the result of its dropping an insurer. In addition, consumers' strong preference for broad networks and the participation of many hospitals in hospital systems, similarly appear likely to limit the negotiating leverage of the merged company.

###

04-498